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(3)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPU

WRIT PETITION NO. 1790 /1997

Petitioner : Sunil Kumar Mukherjee
s/o late Shri B.D.Mukherjee
Aged about 54 years,
Hazichal Block No.2,
Dayalband Chowk,
Bilaspur (M.P.)

Versus

Respondents :1. Deputy General Manager,
Appellate Authority
(Disciplinary)
State Bank of India,
Regional Office,
Raipur (M.P.)

2. Regional Manager,
State Bank of India
Raipur (M.P.)

3. Branch Manager,
State Bank of India,
Main Branch,
Bilaspur (M.P.)

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

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HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.1790 OF 1997

Sunil Kumar Mukherjee

versus

Deputy General Manager and others

ORDER

POST FOR 31st-7-2006

Sd/-
Satish K. Agnihotri
Judge

(164)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.1790 OF 1997

Petitioner	:	Sunil Kumar Mukherjee
	versus	
Respondents	:	Deputy General Manager and others

Present : Mr. M.L.Pastore, counsel for the petitioner.
Mr. P.R.Patankar, counsel for respondents No.1 and 2.
Mr. Sanjay K. Agrawal and Mr. Saurabh Sharma, counsel for respondent No.3.

ORDER
(Passed on 31 -7-2006)

The present petition filed under Article 226/227 of the Constitution of India impugns the order dated 4-12-1996 (Annexure P-14), whereby mercy appeal dated 7-9-1995 of the petitioner was dismissed on the ground that in the light of the provisions of Sastry Award read with Desai Award and other Bi-partite settlements, which govern the service conditions of the employees in the Bank, there is no provision for any mercy appeal against the order of the

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appellate authority. The petitioner has further sought for consequential relief of reinstatement with other benefits from the date other delinquent Mr. P.D.Sharma was reinstated in service.

2. The undisputed facts in nutshell are that the petitioner, while working as Cashier along with one Mr. P.D.Sharma, was charge-sheeted for misappropriation of the amount deposited by the constituents by crediting the same in their accounts. The total amount of defalcation was Rs.26,580/-. A charge-sheet dated 21-4-1982 was issued as per Annexure P-5. The charge-sheet, containing three charges, is quoted herein below :-

> "(i) While you were posted as officer-in-charge at our erstwhile Pamgarh sub-office, you had on a number of occasions either of your own or in collusion with Shri P.D. Sharma, Cashier–in–charge misappropriated amounts deposited by the constituents for credit of their accounts. A list of such misappropriation is given in Annexure-A.
>
> (ii) After accepting the money from the constituents as referred to above either you did not credit the amounts or credited partially/subsequently to their respective accounts.
>
> (iii) You have also on a number of occasions withdrawn/caused to be withdrawn money from the accounts of the constituents by writing/tampering with the withdrawals for higher amounts then desired by the constituents to benefit yourselves."

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Proper enquiry was held and the petitioner along with Mr. P.D.Sharma was found guilty of misappropriation of amount and the charges above-stated were accordingly found proved. In accordance with the enquiry, the petitioner and Mr. P.D.Sharma, by order dated 30-12-1986 (Annexure P-10), were dismissed from the services of the Bank in terms of paragraph 521(5)(a) of Sastry Award read with Desai Award.

3. The petitioner preferred an appeal before the Chief Regional Manager (appellate authority of the respondent – Bank) on 2-3-1987 (Annexure P-11) . The appellate authority, by a reasoned order, dismissed the appeal and the same was communicated to the petitioner by letter dated 27-8-1987. The other delinquent officer Mr. P.D.Sharma also preferred an appeal, which was allowed by order dated 11-7-1989 (Annexure P-12) on the ground of the fact, quoted below :-

> "....having taken into consideration all the factors as well as having regard to 26 years' service put by the employee upto the date of dismissal and with a view to rehabilitating his family on humanitarian grounds, as Shri Sharma has now attained such an age that he will fail to get a suitable job elsewhere, I feel that there is a case for reconsideration of the punishment, imposed upon him, to the extent which will take care of the punitive aspect of the entire case as well as serve as deterrent punishment as deserved by Shri Sharma."

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4. The petitioner did not challenge the order dated 10-7-1987 passed by the appellate authority before High Court or any other superior Court, as such, that attained finality. The petitioner preferred a mercy appeal to the higher authorities, which was dismissed by order dated 4-12-1996 on the ground that there was no provision for mercy appeal.

5. In the meantime, the petitioner filed a writ petition before the High Court of Judicature at Jabalpur seeking disposal of his mercy appeal in Writ Petition No.4125/1996. The High Court of Judicature at Jabalpur, by order dated 3-10-1996 disposed of his petitioner with a direction to consider and decide the mercy appeal within a period of two months (Annexure P-13). The present petition, impugning the order dated 4-12-1996 passed in mercy appeal, was filed on 22-4-1997. Learned counsel in this petition impugns the order of mercy appeal on a simple ground that dismissal of mercy appeal amounts to discrimination as the other delinquent employee, who was charge-sheeted with the petitioner for the same offence and was dismissed from service along with the petitioner, was reinstated in service after his appeal was allowed by the appellate authority provided under provisions of law. This is a case where the petitioner has not chosen to challenge the order passed in statutory appeal provided under provisions of law. The petitioner has impugned the order passed in mercy appeal, which

was dismissed on the ground that there was no provision for mercy appeal under provisions of Sastry Award read with Desai Award. The order passed in statutory appeal has attained finality, which remains unchallenged till date. The order passed in mercy appeal, which was not maintainable at all under provisions of Sastry Award read with Desai Award cannot be challenged in this petition, as no legal right has accrued in favour of the petitioner.

6. So far as discrimination is concerned, that cannot be considered in this petition as the order dated 10-7-1987 passed by the appellate authority is not under challenge and the mercy appeal, which is in question in this appeal, has been dismissed on the ground of non-maintainability. The Hon'ble Supreme Court in **Y.P.Sarabhai vs. Union Bank of India and another, reported in (2006) 5 SCC 377** (at para 9) has held as under :-

> "This Court has repeatedly held that the factual finding of the disciplinary authority after holding a detailed enquiry and after going through elaborate evidence is not assailable in the courts unless the breach of principles of natural justice or the violation of any rules or any material irregularity on the face of record is alleged and shown."

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7. This Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, cannot direct an authority to consider and pass a relief in favour of the petitioner, which is not permissible under provisions of law. The mercy appeal filed by the petitioner is not maintainable under provisions of law and the petitioner has not challenged the order passed by the appellate authority. Thus, this petition is devoid of merit and deserves to be dismissed.

8. For the reasons above-stated, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Gopal